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APR 07 2005

OFFICE OF PETITIONS

In re Application of	:	
Anderson, et al.	:	DECISION
Application No. 09/159,520	:	ON PETITION
Filed: September 23, 1998	:	
Attorney Docket No. HW-106-CIP	:	
For: DIGITAL SOUND RELAXATION AND	:	
SLEEP-INDUCING SYSTEM AND METHOD	:	

This is a decision on the correspondence filed on April 16, 2004, which is being treated as a request for clarification of the record and a petition under 37 CFR 1.137(b) for revival of the above-identified application.

The decision on petition mailed January 28, 2004 is **vacated**.

The petition under 37 CFR 1.137(b) is **dismissed**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." Petitioners are advised that this is not a final agency decision.

This application became abandoned for failure to timely reply to the non-final Office action, mailed August 14, 2002, which set an extendable three month period for reply. No extensions of time having been obtained, the application became abandoned on November 15, 2002 for failure to reply. A Notice of Abandonment was mailed on March 26, 2003.

Petitioners filed a petition under 37 CFR 1.137(b) on January 7, 2004. Latrice Bond, formerly of the Office of Petitions, mailed a decision on January 28, 2004 that granted the petition and revived the application. Petitioners' reply, a CPA, was treated as a RCE.

Ms. Bond was correct in treating the CPA as a RCE because the CPA was improper. CPA practice was eliminated as of July 14, 2003. MPEP 201.06(d)(I)

As stated in MPEP201.06(d)(I)(A), "If a utility... application has a filing date on or after June 8, 1995, an improper CPA filed on or after July 14, 2003 will be treated as a request for continued examination (RCE) under 37 CFR 1.114.... If the improper CPA does not satisfy the requirements of 37 CFR 1.114 (e.g.... the prosecution of the application is not closed), the Office will treat the improper CPA as an improper RCE."

Therefore, the improper CPA was correctly treated as a RCE by Ms. Bond and the February 12, 2004 Notice of Improper Request for Continued Examination (RCE) correctly pointed out that RCE provisions do not apply to an application unless prosecution is closed. The prosecution in this application was not closed. Since there was no preliminary amendment filed with the January 7, 2004 CPA, there was nothing to be considered under 37 CFR 1.111.

The January 28, 2004 decision granting the petition should have been a dismissal because no proper reply was submitted. The January 28, 2004 decision is hereby **vacated**.

It appears Ms. Bond subsequently mailed another decision on petition that granted the January 7, 2004 petition to revive and cited the CPA as the reply, as opposed to the treating the CPA as a RCE. This decision was never entered into Office PALM databases. The later decision was also decided incorrectly, as explained above.

A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply, unless previously filed.;
- (2) the petition fee as set forth in 37 CFR 1.17(m);
- (3) a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and
- (4) any terminal disclaimer (and fee set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(d).

The instant petition does not satisfy requirement (1) above.

Petitioner has still not submitted an acceptable reply to the August 14, 2002 non-final Office action. Either an amendment in response to the Office action or a continuing application under 37 CFR 1.53(b) would be a proper reply.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITION
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By hand: U.S. Patent and Trademark Office
Customer Service Window, Mail Stop Petition
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Alexandria, VA 22314

By FAX: (703) 872-9306 – ATTN: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3230.



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